

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

DOCKET NO. 2002-408-C - ORDER NO. 2003-566

SEPTEMBER 17, 2003

IN RE: Generic Proceeding to Address Inflation)	ORDER
Based Index)	DENYING
)	PETITION

This matter comes before the Public Service Commission of South Carolina (the Commission) on the Petition for Reconsideration and/or Clarification of Order No. 2003-466 filed by the Consumer Advocate for the State of South Carolina (the Consumer Advocate). Responses to the Petition were also filed by BellSouth Telecommunications, Inc. (BellSouth) and United Telephone Company of the Carolinas (Sprint). Because of the reasoning as stated below, the Petition is denied.

The Consumer Advocate notes that in Order No. 2003-466, the Commission accepted Sprint's interpretation of the "inflation-based index" provision of S.C. Code Ann. Section 58-9-576(B)(4) finding that it would not apply to Sprint because on the date of its election of price regulation, Sprint was a small local exchange carrier (LEC) with rates below the statewide average. In his opposition to Sprint's interpretation, the Consumer Advocate had noted in his letter of July 9, 2003 that such an interpretation would leave Sprint's local exchange rates not subject to regulation at all, and could be raised by any amount at any time. In Order No. 2003-466, the Commission held that under Sprint's alternative regulation plan as approved in Order No. 1999-140, rate

increases would be subject to a complaint process to comply with a public interest standard.

The Consumer Advocate states that this Commission was correct in finding that this public interest standard will serve to protect Sprint's ratepayers, since Sprint voluntarily accepted the public interest restriction on rate increases under its alternative regulation plan. The Consumer Advocate then notes that this Commission further states in our Order that we are free, on our own motion or in response to a petition from any interested party to investigate whether a proposed tariff is in the public interest. The Consumer Advocate asserts that it is unclear from the order whether the Commission is making this finding with respect to just Sprint, or with respect to any local exchange company operating under a Section 576 alternative regulation plan.

Further, the Consumer Advocate alleges that in a prior complaint by the Consumer Advocate against BellSouth, the Commission specifically found that there is no public interest requirement in Section 58-9-576 that applies to the adjudication of complaints, citing Order No. 2002-207 in Docket No. 2001-423-C dated March 20, 2002. Therefore, according to the Consumer Advocate, this Commission needs to clarify whether or not it is overruling its previous interpretation of Section 58-9-576 in Order No. 2002-207, such that a public interest standard complaint can be brought against any LEC operating under a Section 576 alternative regulation plan.

The Consumer Advocate further alleges that if the Commission finds that it is not overruling its past precedent regarding a public interest standard, and that this ruling applies only to Sprint, then the Commission should reconsider a portion of the Order

interpreting Section 58-9-576(B)(4). According to the Consumer Advocate, for the purposes of this case and this decision, Sprint's unique acceptance of a public interest standard makes a Commission ruling on the meaning unnecessary. Sprint's request for a ruling that it is not subject to an inflation-based index can be approved simply based on its acceptance of the more restrictive public interest standard, according to the Consumer Advocate, and the Commission need not reach the issue of whether or not when a small LEC whose basic rates are below the statewide average elects regulation, that the inflation-based index does not apply to that company.

The Consumer Advocate states a belief that leaving intact the ruling of Order No. 2003-466 that Sprint is not subject to an inflation-based index creates a harmful precedent. According to him, if other small LECs, whose basic rates are below the statewide average, elect Section 576 regulation, and do not voluntarily accept a public interest standard, their basic rates would not be subject to any regulation at all, and could be raised by any amount at any time. The Consumer Advocate notes that there is no explicit public interest standard in Section 576, and if it is somehow implicit, the Commission would have to overrule its previous BellSouth order, and apply the implicit public interest standard to all 576 plan LECs.

Accordingly, the Consumer Advocate requests that the Commission either reconsider its prior ruling concerning the meaning of Section 58-9-576(B)(4) and find that the inflation-based index does apply to any LEC once its basic rates reach the statewide average, or vacate that portion of the Order as unnecessary for the decision in this case.

Both BellSouth and Sprint filed replies to the Petition. BellSouth requests that this Commission deny the Consumer Advocate's request to have this Commission clarify whether or not we are overruling our previous interpretation of Section 58-9-576 in Order No. 2002-207. In the alternative, BellSouth asks that we specifically clarify that we are not overruling our previous interpretation of Section 58-9-576 in Order No. 2003-207.

Sprint's reply to the Petition notes that the Consumer Advocate is asking this Commission to apply the principles of Order No. 2003-466 to other local exchange companies operating under Section 576 alternative regulation plans. Sprint asserts that this Commission need not address the Consumer Advocate's request. According to Sprint, it is clear that the Commission's Order granting Sprint's Petition for Declaratory Order and Motion to Withdraw is applicable only to Sprint and its price regulation plan. Further, Sprint notes that the applicability of this Order to some other plan of some other local exchange carrier is not before the Commission. Sprint states that the Consumer Advocate's Petition is a request for an advisory opinion and should be denied.

Sprint also notes that the Consumer Advocate also requests that in the event the Commission Order No. 2003-466 is limited to the "unique" facts and circumstances of Sprint's price regulation plan, the Commission should nonetheless reconsider this order because it would create a harmful precedent for the future. The result, the Consumer Advocate argues would be that "if other small LECs whose basic rates are below the statewide average, elect Section 576 regulation and do not voluntarily accept a public interest standard, their basic rates would not be subject to any regulation at all and could be raised by any amount at any time." Sprint argues that the Commission's holding is

limited only to Sprint and does not apply to any other telecommunications carrier providing service in South Carolina. Further, Sprint notes that the Consumer Advocate could have proffered a record to demonstrate potential harm from permitting Order No. 2003-466 to stand during the recent “abuse of market position” hearing, and that Sprint could have responded. Sprint finally asserts that Order No. 2003-466 has been narrowly and properly crafted to the circumstances of Sprint’s price regulation plan before the Commission.

We agree with Sprint and BellSouth. First, we agree with Sprint that Order No. 2003-466 has been narrowly and properly crafted to the circumstances of Sprint’s price regulation plan before the Commission. Our holding was not meant to apply to any other telecommunications carrier but Sprint. Each telecommunications carrier that so desires may craft its own unique plan under the terms of Section 58-9-576. What applies to Sprint may not apply to other telecommunications carriers. Therefore, it is difficult, if not impossible to set any type of precedent in this area. Each plan of alternative regulation must be considered on its own merits before this Commission, much as we considered Sprint’s plan. We also agree with BellSouth that there is no need to overrule our previous interpretation of Section 58-9-576 in Order No. 2003-207. Again, the interpretation and discussion that appeared in that Order was intended to uniquely apply to BellSouth and its particular alternative regulation plan. Each alternative regulation plan must be examined on its individual merits, considering its own unique characteristics. Consequently, there is no need to overrule Order No. 2003-207.

Accordingly, the Petition of the Consumer Advocate is denied. There is no need to clarify these matters, except to state that each alternative regulation plan developed by a LEC under Section 58-9-576 is unique in its own right, and must be considered on its own merits. Therefore, there is no need to overrule any prior Commission Order, nor is there any reason to expand discussion on Order No. 2003-466, which was uniquely geared to Sprint and its alternative regulation plan.

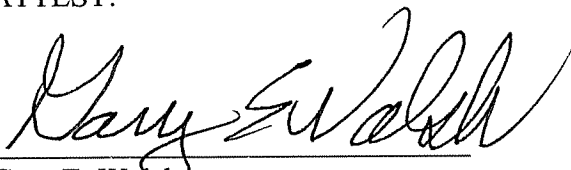
This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn
Chairman

ATTEST:



Gary E. Walsh
Executive Director

(SEAL)